

Memorandum on the enforcement of Hong Kong judgments in the Courts of the People's Republic of China

29 July, 2008

Pursuant to the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties concerned (“the Arrangement”), parties to litigation in Hong Kong may apply to Mainland Courts for recognition and enforcement of enforceable final judgments handed down by Hong Kong Courts (with a choice of Hong Kong court agreement) for payment of money in respect of civil and commercial matters from 1 August 2008.

What types of Hong Kong judgments can one apply for recognition and enforcement in the Mainland after 1 August 2008?

According to the stipulations in the Arrangement, a party may only make an application for recognition and enforcement of judgments made by Hong Kong Courts that fulfil the following conditions:

- the judgment must be concerned with civil and commercial contractual matters, not including matrimonial, succession, tort, contracts of employment and bankruptcy matters (paragraph 2 of Article 3 of the Arrangement).
- the judgment must require payment of money in a civil and commercial case, not including judgments on confirmation of rights and interests or specific performance (Article 1 of the Arrangement).
- where the parties have agreed to use Hong Kong Courts in writing (meaning the parties agree, whether by written contract, letter or e-mail), that the Courts of the Hong Kong SAR are expressly designated as the Court having sole jurisdiction to resolve any dispute.

And the agreement does not expressly, nor clearly state that the Arrangement is not applicable (paragraphs 1 and 3 of Article 3 of the Arrangement).
- judgments must be made by either the Court of Final Appeal, the Court of Appeal, the Court of First Instance or the District Court (paragraph 2 of Article 2 of the Arrangement).
- judgments include any judgment, order or certificate of taxation (or “allocatur”) issued by the Courts of the Hong Kong SAR (Article 2 of the Arrangement).
- the Arrangement applies to judgments made on or after the commencement date of the Arrangement (on or after 1 August 2008) (Article 17 of the Arrangement).

To which Mainland Court should the party make an application?

To make an application for recognition and enforcement of a Hong Kong judgment that comes within the requirements of the Arrangement, one should follow the following procedure:

- file the judgment with the Intermediate People's Court at the place of domicile or ordinary residence of the judgment debtor, or where the property of that party is located (Article 4 of the Arrangement);
- if the judgment debtor's place of domicile or ordinary residence, or where the property of that party is located, falls within the jurisdiction of different Intermediate People's Courts of the Mainland, the applicant should make a choice and apply to either one of such People's Court for recognition and enforcement. The Applicant should not file the applications separately with two or more People's Courts (paragraph 1 of Article 5 of the Arrangement);
- if the judgment debtor's place of domicile or ordinary residence, or where the property of that party is located, falls within both Mainland China and Hong Kong, the applicant may file separate applications with the courts of both places at the same time. However the total amount recovered from enforcing the Judgment in the courts of the two places shall not exceed the sum specified in the Judgment (paragraph 2 of Article 5 of the Arrangement).

What are the time limits and what documents should the applicant submit when making the application?

The applicant should make an application to the relevant Court(s) within two years from

the date on which the judgment becomes enforceable, which shall be the day of the judgment unless the judgment specifies another period of performance, in which case the time limit shall be calculated from the last date of the period of performance specified (paragraphs 2 and 3, Article 8 of the Arrangement).

The Applicant should submit the following documents (Article 6 of the Arrangement) :

- the application for recognition and enforcement should specify the following (Article 7 of the Arrangement):
 - » when the applicant is a natural person, his name and domicile; when the applicant is legal person or other organisation, its name, domicile and the name, duties and domicile of its legal representative or principle responsible person;
 - » the reason for the application, the place where the property of the party against whom the application is filed is situated and the status of the property;
 - » whether or not an application has been made to the Hong Kong Courts for enforcement of the judgment and the status of its enforcement.
- a copy of the final judgment with seal of the Hong Kong Court;
- a certificate issued by the Hong Kong Court, certifying that the judgment is a final judgment as referred to in Article 2 of the Arrangement and enforceable in Hong Kong.
- identification documents:
 - » when the applicant is a natural person, an identity card or notarised copy of the identity card shall be submitted;

- » when the applicant is a legal person or other organisation, a notarised copy of its registration record shall be submitted;
- » when the applicant is a foreign person or any other organisation, corresponding notarisation and authentication of documents shall be submitted.

Where any document submitted to a People's Court of the Mainland is not in the Chinese language, the applicant should submit a Chinese translation which has been duly certified as correct (paragraphs 2 and 3 of Article 6 of the Arrangement).

In what circumstances will judgments made by Hong Kong Courts be refused recognition and enforcement on the Mainland? What alternative remedies are open to the Applicant?

According to the Arrangement, when a debtor under a judgment made by a Hong Kong Court provides evidence to show any of the following situations, Mainland Courts shall refuse to recognise and enforce the judgment (Article 9 of the Arrangement) :

- the choice of Hong Kong Court agreement is invalid, but not including cases where Hong Kong Courts have made a determination that the choice of court agreement is valid;
- the judgment has been wholly satisfied;
- pursuant to Mainland law, Mainland Courts have exclusive jurisdiction over the case;
- the party who did not appear in Court, and against whom a judgment was given, had not been summoned according to

Hong Kong law or the party had been summoned according to Hong Kong law but had not been given such time to defend the proceedings as specified by Hong Kong law. This is unless the service was effected by way of public announcement according to Hong Kong law;

- the judgment was obtained by fraud;
- a judgment on the same cause of action between the parties has been made by the Mainland Court where enforcement is sought, or by a court of a foreign country or outside the territory, or an arbitral award has been made by an arbitration body, and the said judgment or award has already been recognised or enforced by the Mainland Court.

Where any party concerned is aggrieved by the decision on the recognition and enforcement of a judgment, he may apply to a People's Court at the next higher level for review (Article 12 of the Arrangement).

Where a Mainland Court dealing with the application has refused recognition or enforcement of the judgment, the applicant may not make another application for recognition and enforcement.

However, the applicant may bring a Court action on the same facts in a court of the place where enforcement of the judgment was sought (paragraph 3 of Article 13 of the Arrangement).

This Memorandum only provides general information on the procedure for enforcement of Mainland judgments in Hong Kong. For any further information, please contact our partner, Mr. Thomas So at +852 2843 4502.

關於香港特別行政區法院作出的判決在中國內地法院的執行備忘錄

2008年7月29日

根據《關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排》（以下簡稱《安排》），自2008年8月1日起，香港特別行政區法院在具有書面管轄協議的民商事案件中作出的須支付款項的具有執行力的終審判決，當事人可以根據本《安排》向內地法院申請認可和執行。

何種類型的香港法院判決可以在8月1日之後向內地法院申請認可和執行？

根據《安排》的規定，只有符合下列條件的香港法院判決方可以向內地法院申請認可和執行：

民商事合約案件，不包括婚姻、繼承、侵權、勞動爭議、破產等其他民商事案件；（《安排》第三條第二款）

源於商業合約的爭議所做出的給付金錢的判決，不包括確認權益或者要求履行某種行為等的其他判決；（《安排》第一條）

當事人以書面形式明確約定爭議的管轄地點，即當事人以合同書、信件和資料電文等形式，明確約定香港特別行政區法院具有唯一管轄爭議的權力。而約定未有明確或清楚註明安排不適用。（《安排》第三條第一款、第三款）

判決須是香港特別行政區終審法院、高等法院上訴法庭、原訟法庭或區域法院作出的生效判決；（《安排》第二條第（二）項第一款）

本《安排》所稱判決，指香港特別行政區法院的判決書、命令和訴訟費評定證明書。（《安排》第二條第（二）項第二款）；

判決須是本《安排》生效之日（2008年8月1日或以後）起作出的。（《安排》第十七條）

當事人應該向哪個內地法院提出申請？

在內地申請認可和執行符合本《安排》規定的香港法院判決，應遵循以下規定：

- 可以向被申請人住所地、經常居住地或者財產所在地的中級人民法院提出；（《安排》第四條）
- 被申請人住所地、經常居住地或者財產所在地在內地不同的中級人民法院轄區的，申請人應當選擇向其中一個人民法院提出認可和執行的申請，不得分別向兩個或者以上人民法院申請；（《安排》第五條第一款）
- 被申請人的住所地、經常居住地或者財產所在地，既在內地又在香港特別行政區

的，申請人可以同時分別向兩地法院提出申請，兩地法院分別執行判決的總額，不得超過判決確定的數額。（《安排》第五條第二款）

提出申請時，申請人的時限為何及應提交哪些文件？

申請人應當在二年內向內地有關法院提出申請。該期間從判決可強制執行之日起計算，該日為判決上注明的判決日期，判決對履行期間另有規定的，從規定的履行期間屆滿後開始計算。（《安排》第八條第二、三款）

申請人向有關法院申請認可和執行判決，應當提交下列檔：（《安排》第六條）

- 請求認可和執行的申請書，申請書應當載明下列事項：（《安排》第七條）
 - » 當事人為自然人的，其姓名、住所；當事人為法人或者其他組織的，法人或者其他組織的名稱、住所以及法定代表人或者主要負責人的姓名、職務和住所；
 - » 申請執行的理由與請求的內容，被申請人的財產所在地及財產狀況；
 - » 判決是否向香港法院申請執行以及已執行的情況。
- 經作出終審判決的香港法院蓋章的判決書副本；
- 作出終審判決的香港法院出具的證明書，證明該判決屬於本《安排》第二條所指的終審判決，在香港也可以執行；
- 身份證明材料：
 - » 申請人為自然人的，應當提交身份證或者經公證的身份證影本；
 - » 申請人為法人或者其他組織的，應當提

交經公證的法人或者其他組織註冊登記證書的影本；

- » 申請人是外國籍法人或者其他組織的，應當提交相應的公證和認證材料。

上述各種檔都要以中文製作，沒有中文文本的，申請人應當提交證明無誤的中文譯本。香港法院出具的證明書，無需另行公證。（《安排》第六條第二、三款）

在哪些情況下，香港法院的判決會被內地法院拒絕認可和執行？申請人有什麼救濟途徑？

根據《安排》的規定，香港法院判決中的債務人提供證據證明有下列情形之一的，受理申請的內地法院經審查核實，裁定不予認可和執行：（《安排》第九條）

- 根據當事人協定選擇的香港的法律，管轄協議屬於無效。但香港法院已經判定該管轄協議有效的除外；
- 判決已獲完全履行；
- 根據內地的法律，內地法院對該案享有專屬管轄權；
- 根據香港的法律，未曾出庭的敗訴一方當事人未經合法傳喚或者雖經合法傳喚但未獲依法律規定的答辯時間。但香港法院根據其法律或者有關規定公告送達的，不屬於上述情形；
- 判決是以欺詐方法獲得的；
- 內地法院就相同訴訟請求作出判決，或者外國、境外地區法院就相同訴訟請求作出判決，或者仲裁機構作出仲裁裁決，已經為內地法院所認可或者執行的；
- 內地法院認為在內地執行香港法院判決違

反內地社會公共利益的，不予認可和執行。

當事人對內地法院作出的認可與執行與否的裁定不服的，可以向該法院的上一級人民法院申請復議。（《安排》第十二條）

對不予認可和執行的判決，申請人不得再行提起認可和執行的申請，但是可以按照內地的法律依相同案件事實向內地提起法院訴訟。（《安排》第十三條第三款）

本備忘錄僅是針對內地判決在香港強制執行程序的一般情況而言。如果需要更詳盡的資訊，請與我所合夥人蘇律師聯繫，聯繫電話為：+852 2843 4502

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